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DEPARTMENT FOR SRAP STAFF,SCA/A, INL, DOJ

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SUBJECT: FIGHTING CORRUPTION IN AFGHANISTAN OFF TO A ROCKY
START

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Classified By: Political Counselor Annie Pforzheimer; reasons 1.4 (b) a
nd (d).

¶1. (C)Summary: Kabul Mayor Abdul Ahad Sahebi's recent release on bail pending appeal of his conviction for misuse of public funds caused a media firestorm that has intensified public perceptions of Karzai administration corruption. President Karzai,s public defense of Sahebi coincides with reports that the President interfered in the judicial process and ordered Sahebi,s release. Embassy officials have received conflicting accounts concerning the nature and degree of Karzai,s alleged involvement in the release and conflicting assessments of the merits of the case. Afghan law allows a defendant to be released on bail pending appeal, so there is nothing technically illegal about Sahebi,s current status as a free man. End Summary

¶2. (C) On December 7, 2009, a court convicted Kabul Mayor Abdul Ahad Sahebi for misuse of public funds when he awarded a city contract for lease of commercial space without letting the contract out for bid. The court sentenced the Mayor to four years in prison and ordered him to pay a 16,000 USD fine. When the Mayor was released pending appeal on December 8, there was a firestorm of media speculation that President Karzai had improperly ordered his release. Embassy officials met with Attorney General Aloko on December 8 and 9 and received conflicting accounts of what transpired. On the 8th, according to State Department INL officers, Aloko said Sahebi had been convicted in absencia and that shortly thereafter President Karzai ordered Sahebi,s release from jail. On the 9th, according to U.S. Department of Justice officials, Aloko said Sahebi was present at the trial, denied that the President or his office had intervened in the case, and stated the mayor was released after properly filing a request for release pending appeal. (Note: Under Afghan law, the conviction of the primary court is not final until all appeals are exhausted and, as under U.S. law, the defendant may be released pending appeal. Unlike U.S. law, the appeals process is automatic and involves a complete review of the case - a trial de novo - at the appellate levels).

Palace Perspective

¶3. (S) Palace Chief of Staff Omer Daudzai raised the mayor's case during a December 10 meeting with Deputy Ambassador Ricciardone. Daudzai said the Mayor's conviction took the President,s Office by surprise and noted that the Kabul Mayor had no political power base or connections and was not even very well known to Karzai. According to Daudzai, the Mayor's Office first came to the Palace's attention about four months ago when the Attorney General notified them that

they were investigating the Deputy Mayor for improprieties concerning property leases and that the Deputy Mayor was implicating the Mayor. Daudzai said when President Karzai heard about the Mayor's conviction, he asked Supreme Court Chief Justice Azimi about the case and inquired if it would be permissible under Afghan law to release him pending appeal. According to Daudzai, the Chief Justice expressed some skepticism about the facts of the case and some concern that it was politically motivated. Azimi affirmed, Daudzai added, that release pending appeal was legally permissible. Daudzai told Ambassador Ricciardone that Karzai planned to stay out of the case in the future.

The Karzai Version of "Staying out of the Case"

¶4. (U) Instead of refusing to comment on the merits of the case and thus avoid the appearance of improper meddling, President Karzai publicly addressed the issue in his opening remarks at the December 16 Anti-Corruption Conference. He stated that although Mayor Sahebi might be rightly dismissed due to "the slow process of his performance," he was a "clean and honest man," and should not be accused of corruption. Passionately arguing that, "The fight against corruption should not turn into oppressing respectable individuals," Karzai called for the Attorney General and the Supreme Court Chief Justice to look into whether the charges against Sahebi were true or politically motivated. If the accusations were true, he said, then Sahebi should serve his jail time, but if they were false, then this was an example of the corruption via politicization of the justice system.

¶5. (U) At the same conference, High Office of Oversight (HOO) Director Osmani received numerous questions on this topic during his press conference. To his credit, Osmani answered each question from the Afghan and international

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press, focused on the appeals process rather than the merits of the case, and asked that no one draw any conclusions until the entire appeals process had run its course. (Comment: From the Embassy's perspective, the good news story of the event was the interest the Afghan media displayed concerning Afghan legal processes and procedures. The fourth estate has a critical role to play in ensuring the independence of the legal system and the transparency of its workings in society. The conference served as an educational step forward in this regard. End Comment)

Is There a Needle in this Haystack?

¶6. (C) In his December 11 interview on CNN, Mayor Sahebi presented himself as a witch-hunt victim of a scurrilous Attorney Generals, office that was unhappy with him for refusing to illegally evict people from city plots of land. This version of events could be plausible in light of remarks by Chairman of the Hezb-e-Islami Afghanistan party Arghandawal, who characterized the mayor to poloffs as a "weak and unprotected" technocrat who has made political enemies. He added that Sahebi is vulnerable precisely because he refused to give land titles to some powerful people including, Arghandawal admitted, to Arghandawal himself. In other discussions with Embassy officials, some friends and business associates of Sahebi have echoed Karzai's public remarks and vouched for Sahebi's honesty, if not his competence. For example, the governor of Kabul, a U.S. trained engineer, told Ambassador Wayne on December 15 that both the Mayor and the Deputy Mayor were honest men, but the Mayor was incompetent, and he could imagine him signing off on some questionable deals without realizing what he was doing. Even a politically influential Karzai opponent who took offense at Karzai's public defense of the mayor told Deputy Ambassador Ricciardone that, "although Sahebi is

widely known to be crazy, those who know him know he is no thief."

¶7. (C) Comment: This case illustrates the pitfalls that await President Karzai and the Embassy as Karzai begins to implement his publicly enunciated commitment to battle public corruption. Is the mayor of Kabul corrupt, simply inept, or a victim of his own honesty in a corrupt, vendetta-driven system? Did Karzai apply improper pressure to secure the mayor's release, merely inquire about the case and express support for whatever interim relief might be legally available to the mayor, or leave himself open to public condemnation for having used improper influence because he was angry and felt honor-bound to publicly defend an official he suspected was being unfairly railroaded? In Afghanistan's patronage-based power structure with its culture of tribal values, weak social institutions, corruption - both petty and large - and conspiratorial finger pointing, it will be difficult, if not impossible, to know with any degree of certainty what is really going on. We will encourage Karzai to reinforce the independence of his legal system by maintaining a professional distance from its investigations and prosecutions and by publicly expressing confidence, not doubt, in its capacity to deliver justice. We also will continue to mentor prosecutors at the AG's office as they work to build a system worthy of the people's trust.
End Comment

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